In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-475

WENDELL WARREN AUSTIN, PETITIONER

v.

UNITED STATES OF AMERICA

No. 72-5451

CHARLES ALLEN SAVIDGE, PETITIONER

v.

UNITED STATES OF AMERICA

No. 72-5476

IRVING WELLESLEY BEEMAN, PETITIONER

v.

UNITED STATES OF AMERICA

MOTIONS FOR LEAVE TO PROCEED IN FORMA PAUPERIS IN [illegible] 72-5451 AND 72-5476 AND ON PETITIONS FOR WRITS OF [illegible]TIORARI TO THE UNITED STATES COURT OF APPEALS FOR [illegible] TENTH CIRCUIT

[illegible]ORANDUM FOR THE UNITED STATES IN OPPOSITION

[illegible]fter a six-week jury trial in the United States Dis[illegible] Court for the District of Kansas, petitioners

[illegible]-106—72

were convicted of securities fraud in violation of 15 U.S.C. 77q, and of mail fraud in violation of 18 U.S.C. 1341–1343 and 2314.[1] Each was sentenced to concurrent five year terms of imprisonment (App. XXI, 6402 and 6408–6409; XXII, 6467–6468).[2] The court of appeals affirmed in a thorough opinion on June 26, 1972, reported at 462 F. 2d 724, and denied petitions for rehearing on August 7, 1972. The petitions for writs of certiorari of petitioners Austin and Beeman were filed on September 21, 1972, and September 26, 1972, respectively, and are thus out of time under Rule 22(2) of the Rules of this Court.[3] There is, in any event, no reason to grant the writs.

The pertinent facts are summarized in the exhaustive opinion of the court of appeals, attached as an appendix to each petition. Briefly stated, the evidence at trial showed participation by petitioners in a scheme to defraud one Gus Horwitz by obtaining a loan commitment fee from him in exchange for a guarantee of financing in connection with the acquisition of a country club in Aurora, Illinois. A substantial part of the prosecution's case at trial was directed

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[1] Two co-defendants, Darel Martin and William Bales, were also convicted. Martin died pending appeal and Bales has not filed a petition for a writ of certiorari.

[2] "App." refers to the 24 volume appendix in the court of appeals, a copy of which has been forwarded to the Court.

[3] On application of petitioner Savidge, Mr. Justice White extended the time within which to file a petition for certiorari to September 22, 1972, and petitioner Savidge's petition was filed on that date.

at showing that petitioners' dealings with Horwitz were but one instance of a continuing scheme to defraud would-be borrowers by providing loan commitments that would never be honored.

Petitioners' principal contentions are that each should have been granted a severance, that the trial court erred in admitting evidence of similar offenses and in reserving rulings on the admissibility of exhibits, and that the jury was improperly instructed that a commitment letter, if one was found to have been given, would be a "security" as a matter of law. These contentions were fully considered by the court of appeals and were properly rejected in an opinion upon which we rely.[4]

It is therefore respectfully submitted that the petitions for writs of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

NOVEMBER 1972.

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[4] Petitioner Austin also contends that the evidence as to his participation was insufficient. This contention is also answered by the opinion below.

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